Opinion: How California can legally opt out of the war on pot

By Steve Kubby

Federal officials have declared war on California, insisting that any resistance to their Controlled Substance Act is futile. Like the Red Chinese attempting to crush Tibetan culture and autonomy, our own federal government is fraudulently asserting its authority to crush California's vibrant cannabis economy and culture.

However, this is not Tibet, it is America. Freedom-loving Americans shed blood and sacrificed lives to provide us with a Constitution and Bill of Rights that secures our freedoms and allows us to enjoy the blessing of life, liberty and the pursuit of happiness.

Incredibly, the federal government alleges that under the Commerce and Supremacy clauses of the U.S. Constitution, federal law supersedes state law. Furthermore, we find there is an endless stream of legal experts and constitutional scholars who all mindlessly parrot this nonsense. Regardless of their legal standing or academic credentials, all these officials, experts and scholars are full of bongwater and do not know what they are talking about.

Steve Kubby

The notion that the federal government can use these clauses to impose federal law on cannabis produced and sold within California's borders is absolutely false.

The government relies upon a bogus Supreme Court decision in Gonzales v. Raich, which found that consuming one's locally grown marijuana for medical purposes affects the interstate market of marijuana, and hence that the federal government may regulate—and prohibit—such consumption. This argument stems from the landmark New Deal case Wickard v. Filburn, which supposedly held that the government may regulate personal cultivation and consumption of crops, due to the effect of that consumption on interstate commerce, however minute it may be. That may be true, but only under certain circumstances.

Lost in all the arguments presented in Gonzales v. Raich was the fact that Roscoe Filburn was a farmer who accepted New Deal federal money to limit how much wheat he grew. Filburn was caught violating his contract with the federal government by producing wheat in excess of the amount permitted. The government then sued Filburn for violating the terms of his contract, Filburn objected on constitutional grounds and the case went to the Supreme Court.

Now for a brief history lesson. During 1941, producers who officially enrolled in the Agricultural Adjustment Act of 1938, received an average price on the farm of about $1.16 a bushel, as compared with the world market price of 40 cents a bushel. Filburn signed up for the federal program and was paid to not grow over an allotted amount of wheat. In July 1940, pursuant to the Agricultural Adjustment Act, Filburn's 1941 allotment was established at 11.1 acres and a normal yield of 20.1 bushels of wheat per acre. Filburn was given notice of the allotment in July 1940 before the fall planting of his 1941 crop of wheat, and again in July 1941, before it was harvested. Despite these notices and a signed contract with the federal government, Filburn planted 23 acres and harvested 239 bushels from his 11.9 acres of excess area.

Filburn argued that because the excess wheat was produced for his private consumption on his own farm, it never entered commerce at all, much less interstate commerce, and therefore was not a proper subject of federal regulation under the Commerce Clause. Unfortunately, Harvard educated attorney Robert Raich failed to point out that once Filburn accepted Federal money and violated the terms of his contract, then and only then, did it become a Federal matter. Had Raich argued that Wickard v. Filburn only applied in cases where farmers had enrolled in Federal programs, signed contracts and accepted Federal money, the Supreme Court would not have had any basis to render the defective decision that they did.

These same ignorant federal officials and legal experts will also tell you that the Tenth Amendment is ignored by the courts and has no real power. More bongwater. I call your attention to Bond v. United States in which the Supreme Court ruled this year to unanimously uphold the powers reserved to individuals and states by the Tenth Amendment. In that decision, all nine justices agreed that the Tenth Amendment means that "State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.'"

The Supreme Court further limited the role of the federal government in their decision by proclaiming:

> Some of these liberties are of a political character. The federal structure allows local policies "more sensitive to the diverse needs of a heterogeneous society," permits "innovation and experimentation," enables greater citizen "involvement in democratic processes," and makes government "more responsive by putting the States in competition for a mobile citizenry." Gregory v. Ashcroft, 501 U. S. 452, 458 (1991). Federalism secures the freedom of the individual. It allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely

upon the political processes that control a remote central power.

The time has come to stand up for liberty and insist upon our 10th Amendment right to opt out of Federal laws that violate the sovereignty and safety of our state. Fortunately, California voters will have a chance on Nove. 6, 2012, to adopt a revolutionary new initiative that authorizes California to legally opt out of the Controlled Substances Act. That initiative is the Regulate Marijuana Like Wine Act and it was specifically written to invoke the full power and protections of our precious Constitution and Bill of Rights.

Steve Kubby is CEO of Strategic Campaigns LLC and serves as chief officer and campaign chairman for a new California voter initiative to Regulate Marijuana Like Wine.